

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

C.A.F. NO.2123/2017 WITH C.A.F. NO.3978/2017 IN FIRST APPEAL ST. NO.
26207/2016

(EXECUTIVE ENGINEER, MINOR IRRIGATION DEPARTMENT, WASHIM **VERSUS** SAU. PUSHPABAI
ULHAS RATHOD & OTHERS)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri J.B. Kasat, Counsel for the appellant.
Shri N.M. Kolhe, Counsel for the respondent No.1.
Shri N.D. Dubey, AGP for the respondent Nos.2 & 3.

CORAM : S.B. SHUKRE, J.

DATE : NOVEMBER 06, 2017.

Heard learned counsel Shri Kasat for the applicant/appellant, learned counsel Shri Kolhe for the respondent No.1 and learned A.G.P. Shri Dubey for the respondent Nos.2 and 3.

For the reasons stated in the application, application is allowed. Delay is condoned. Appeal be registered.

Application stands disposed of.

FIRST APPEAL ST. NO.26207/2016

Heard.

Admit.

Call for R & P.

Learned counsel Shri Kolhe waives notice of final disposal on behalf of respondent No.1 and learned AGP Shri Dubey waives notice for final disposal on behalf of respondent Nos.2 and 3.

C.A.F. NO.3978/2017

Heard.

Learned counsel for the applicant/respondent No.1, learned counsel for the appellant Shri Kasat and learned AGP for the respondent Nos.2 and 3. Perused the impugned award.

It is seen from the impugned award that the reference court has placed heavy reliance upon the evidence of the expert P.W.2 D.H. Borkar and his valuation report at Exh.24 and also one 7/12 extract for the year 1995-96 in order to record its finding that there were in existence 184 orange trees in the land of the claimant from the year 1995-96. However, prima facie this finding does not appear to be consistent with the other evidence available on record. Impugned judgment and order makes a specific mention of yet another 7/12 extract issued in the year 1996-97 showing that the acquired land was fallow in that year. The expert witness P.W.2 D.H. Borkar had visited the land of the claimant on 25.06.1997 and he signed his valuation

report on 10.10.1997. As it appears from the observations of the reference court made in paragraph-8 of the judgment and order, this expert witness had personally seen these trees to be existing on the acquired land. That means, presence of these trees was seen by him on 25.06.1997, but it is also the case of the land owner that in the year 1996-97 the acquired land was fallow and barren, meaning thereby that there were neither any crops nor any trees or any other plant life. In short, the acquired land was devoid of any green cover. It is also prima facie seen that the reference court has not dealt with the merits of 7/12 extract for the year 1996-97 on the evidence adduced by the claimant. So, I am of the view that there is a prima facie doubt about the existence of orange trees on the date of the notification or even on the date of possession. In fact, the impugned judgment and order does not show that the land owner has given any evidence about the date on which possession was taken by the acquiring body, though he has generally stated that it was taken about four years prior to the Section 4 L.A. Act notification, which was of the date 04.05.2000.

The above discussion of the evidence would show that there is a prima facie doubt about the existence of orange trees on the acquired land on the date of possession and therefore, the appellant has an arguable case in the matter at least in respect of the compensation awarded for the orange trees.

These circumstances would enable me to only partly allow this application and accordingly, the application is partly allowed.

The claimant/respondent No.1 is permitted to withdraw 30% of the amount deposited in this court on her furnishing usual undertaking within six weeks from the date of the order.

The application stands disposed of.

JUDGE

SHRIPAD